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JAN 4 2 45 PM '02

December 24, 2001

N. Bradley Litchfield
Office of General Counsel
Federal Election Commission
999 E St NW
Washington, DC 20463

AOR 2002-02

Dear Mr. Litchfield:

Enclosed you will find a law enacted by the Maryland General Assembly (MD Annotated Code, State Government Article, 15-714) that prohibits regulated lobbyists from actively fundraising on behalf of members of the General Assembly. (The law does not prohibit individual contributions from lobbyists.)

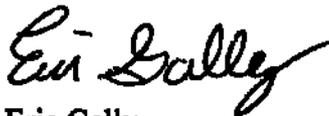
Staff counsel for the Maryland State Ethics Commission has interpreted this law to mean that regulated lobbyists may not actively fundraise on behalf of a candidate for U.S. Congress IF that candidate happens to be a sitting member of the General Assembly.

It is my contention that the Federal Election Campaign Act preempts the state from prohibiting a regulated lobbyist, in this case myself, from soliciting contributions on behalf of a Congressional candidate, even if that candidate is a sitting member of the state legislature.

Since it is my intent to fundraise on behalf of a candidate in this position, I would appreciate an advisory opinion regarding the Federal Election Campaign Act's preemption of this particular provision of the Maryland law.

I can be reached at the phone numbers listed below and would be happy to provide any additional information necessary to assist the timely completion of an advisory opinion.

Sincerely,



Eric Gally
7239 Grinnell Drive, Rockville, MD, 20855
(301) 251-8710 (work); (301) 251-5290 (home); (301) 503-1918 (cell)

Article - State Government

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§ 15-714.

(a) In this section, "candidate", "contribution", and "political committee" have the meanings provided in Article 33, § 1-101 of the Code.

(b) This section applies only to a regulated lobbyist described in § 15-701(a)(1), (2), (3), or (4) of this subtitle.

(c) The restrictions in this section apply from the starting date of the regulated lobbyist's registration to the end of the calendar year in which the registration period ends.

(d) (1) A regulated lobbyist who is subject to this section or a person acting on behalf of the regulated lobbyist may not, for the benefit of the Governor, Lieutenant Governor, Attorney General, Comptroller, or member of the General Assembly, or candidate for election to the office of Governor, Lieutenant Governor, Attorney General, Comptroller, or member of the General Assembly, engage in the following activities:

(i) soliciting or transmitting a political contribution from any person, including a political committee;

(ii) serving on a fund-raising committee or a political committee;

(iii) acting as a treasurer for a candidate or official or as treasurer or chairman of a political committee;

(iv) organizing or establishing a political committee for the purpose of soliciting or transmitting contributions from any person; or

(v) forwarding tickets for fund-raising activities, or other solicitations for political contributions, to a potential contributor.

(2) This section does not prohibit a regulated lobbyist from:

(i) making a personal political contribution;

(ii) informing any entity of a position taken by a candidate or official; or

(iii) engaging in other activities not specifically prohibited under paragraph (1) of this subsection.

(3) This section does not apply to a regulated lobbyist who is a candidate with respect to the regulated lobbyist's own campaign.

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FAX Cover Sheet

To: N. Bradley Litchfield, Office of the General Counsel
Fr: Eric Gally
Re: Requested Advisory Opinion
Pages: Seven, including this cover sheet

Thanks again. I can be reached by cell phone at (301) 503-1918 if you have any questions or advice. I greatly appreciate your time and counsel.

SPECIAL ETHICS LAW MEMO

Campaign Finance Activity

MEMO TO: Maryland Lobbyists

SUBJECT: Lobbyist Campaign Finance Activity - State Officials and Candidates -
Policy Definition Issues (State Government Article, §§15-707, 15-713,
15-714 and 15-715)

Outlined in this memo are the main provisions of the Ethics Law related to regulated lobbyist campaign finance activity followed by some questions and answers to assist in understanding of the Law. This memo is based on discussions with the State Ethics Commission but does not constitute an advisory opinion of the Commission. Its purpose is to assist those who have asked for some general guidelines. The guidance has been developed to discuss issues that are common to many lobbyists and to describe some approaches that can bring lobbyists into compliance. Issues not covered in this memo or specific fact situations may need further review by the Commission. If you plan to take any actions that are not clearly consistent with the guidelines in this memo, you should ask for specific review by the staff or the Commission prior to taking these actions.

Major Elements of §15-713

Section 15-713 outlines most of the standards of conduct for individual regulated lobbyists. Many of these standards are of general application but some have specific application as to campaign finance and election activity.

One specific set of standards prohibits an individual regulated lobbyist if serving on a State or local central committee of a political party from participating as an officer of the Central Committee, engaging in fund-raising activity on behalf of the political party or in actions relating to filling a vacancy in a public office. It should also be noted there are other general standards in §15-713, which may have application in campaign finance or election situations. For example, a regulated lobbyist may not counsel a person to violate State or Federal Law. Also prohibited are engaging in or counseling a person to engage in fraudulent conduct.

Major Elements of §15-714

The core of §15-714 is summarized below.

A lobbyist who lobbies the Executive or Legislative branch of State government, or a person acting on behalf of the lobbyist may not for the benefit of the Governor, Lt. Governor, Attorney General, Comptroller, member of the General Assembly or candidate for these offices engage in the following activities:

- ① Solicit or transmit a contribution from any person or political committee.
- ② Serve on a fund raising committee or a political committee.
3. Act as a treasurer for a candidate or official, or treasurer, or chairman of a political committee.
4. Organize or establish a political committee for the purpose of soliciting or transmitting contributions from any person.
5. Forward tickets for fundraising activities or other solicitations for political contributions to a potential contributor.

The Law specifically allows the lobbyist to 1) make a personal political contribution under the Election Law and 2) inform the lobbyist's employer, or others of the position taken by a particular candidate for office. These two items are examples of what a lobbyist may do but are not intended to be a list of all permitted lobbyist activity. The Law allows activities not specifically prohibited.

Major Elements of §15-707

Section 15-707 of the Ethics Law requires an individual regulated lobbyist to file a report

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disclosing political contributions made directly or indirectly by the regulated lobbyist during the reporting period under the provision of State Election Laws for the benefit of the Governor, Lt. Governor, Attorney General, Comptroller, member of the General Assembly or a candidate for election to any of those offices. The report is to name the officials or candidates for whose benefit a contribution was made, the total contribution to that candidate, and is to be filed with the State Ethics Commission at the same time as the General Lobbying Activity Report.

Major Elements of §15-715

This section establishes a campaign contribution disclosure program for persons and entities who compensate lobbyists. The Law sets out thresholds and rules of attribution determining under what circumstances a contribution triggers disclosure by a person or a business entity. The forms are to be filed with the State Board of Elections using procedures and forms specified by that agency.

General Guidelines

1. How is the language regarding a person acting on behalf of a lobbyist to be interpreted?

Answer: The Law is intended to avoid attempts at getting around the prohibitions by using a non-lobbyist acting on behalf of the lobbyist to carry out prohibited campaign finance activities. Therefore, generally, persons engaged in soliciting or transmitting contributions covered by the Law should not be under the direction, supervision, or control of a lobbyist. The ultimate test is whether in fact the non-lobbyist is acting on behalf of the lobbyist in carrying out prohibited solicitation and transmittal activities. Where a law firm or lobbying firm is owned by a lobbyist or a group of lobbyists, it will generally be presumed its employees are acting on behalf of a lobbyist.

2. Does the Law apply to prohibit a lobbyist soliciting contributions for a general purpose PAC if any of the money raised is to be contributed to the State officials or candidates covered by the Law?

Answer: Yes, the purpose of the Law is to bar lobbyists fund raising as to these offices from any person or entity (clients or non-clients) and also bar transmittal of contributions if any of the funds are for the State officials and candidates covered by the Law.

3. Is there any PAC work a lobbyist can do if the PAC is involved in contribution activity related to the State officials or candidates covered by the Law?

Answer: Assuming the lobbyist is not serving on a fundraising committee or acting as an officer or treasurer of a committee, the lobbyist may perform very limited ministerial tasks that do not amount to solicitation, transmittal of contributions or organizing a PAC. Great care should be taken here to limit this activity to clerical, ministerial or administrative tasks and to avoid activities that could identify or otherwise directly involve the lobbyist as making a solicitation or transmittal or organizing a committee. It would be best however, for the lobbyist and staff to avoid this activity in order to assure compliance particularly in view of the prohibition against organizing or establishing these political committees. Specific questions should be referred to the State Ethics Commission.

4. What if the funds solicited by a lobbyist may be used for a variety of candidates, only some of which will be to the State officials or candidates covered by the Law?

Answer: If any of the funds are to go to State officials or candidates for that office, then the prohibitions apply. Generally, if none of the funds are to go to these persons, then the restrictions in §15-714 do not apply but §15-713 does prohibit lobbyist members of central committees from engaging in any fundraising on behalf of the political party.

5. What if a person files a lobbyist registration but actually ends up not meeting the criteria of being a lobbyist under the Law? Is this person restricted by the Law?

Answer: The conduct restrictions of the Law do not cover these persons but the reporting provisions are applicable to a person if registered to lobby even if they have no activity.

6. If asked by an employer about a State official or candidate covered by the Law, what can a lobbyist say?

Answer: The lobbyist can say anything if they do not engage in soliciting, transmitting or other specific conduct prohibited under the statute. The general intent of this legislation is that communication with employers was not to be limited except in the circumstances prohibited by the Law. This means, for example, that a lobbyist can generally respond to any reasonably contemporaneous contribution related questions from his employer regarding a State official or candidate. Discussions can include substantive evaluation and may also include specific contributions recommendations where these are requested. In complying with §15-714, one

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central test is whether the lobbyist's conduct is in fact a solicitation or transmittal of a contribution as restricted in the statute. A key fact in evaluating this activity is whether the lobbyist is responding to an inquiry or initiating a solicitation.

7. Can a lobbyist solicit contributions for PACs or other committees or candidates as long as the activity is limited to officials and candidates not covered by §15-714?

Answer: Generally, the lobbyist can solicit for these other groups as long as they can show that the money is not going to a State official or candidate covered by the Law unless the lobbyist is also limited by the further restrictions of §15-713 as a member of a central committee.

8. What does the word "solicit" mean?

Answer: Solicit generally means to ask or seek, or to appeal for. Solicit is an affirmative activity such as asking for funds, holding or hosting a fund raising event or having involvement in these activities.

9. What does the word "transmit" mean?

Answer: This includes, for example, transmitting the contributions by hand, mail, or other conveyance. It also means someone else transmitting at the lobbyist's direction.

10. Can a lobbyist serve on a PAC or other committee or be Treasurer or Chairman of a political committee as long as it does not get involved in contributing to the State officials and candidates covered by the Law?

Answer: Generally, a lobbyist can serve on a PAC or other committee if it does not raise funds for or contribute to the State officials and candidates covered by the Law. However, a lobbyist cannot be an officer of a central committee or fund-raise on behalf of a political party while being a member of a central committee.

11. If a lobbyist's employer buys a ticket to a fundraiser, can the employer give the ticket to the lobbyist so that they can attend free?

Answer: The lobbyist can attend the fundraiser with the ticket assuming they did not solicit the contribution and that it was paid for without his involvement in transmitting the payment.

12. If a lobbyist buys a ticket to a fundraiser, can they request the employer to reimburse him?

Answer: No, this would constitute solicitation and possibly transmittal depending on the facts.

13. If a lobbyist is solicited personally to buy tickets to a fundraiser by a State official or candidate covered by the Law, how should these be handled?

Answer: The lobbyist may use personal funds to buy the tickets within the limits allowable by the Election Law. If the lobbyist decides not to buy the tickets, the best approach to avoid the restrictions in the Ethics Law would be to discard the tickets or return them to the sender. Section 15-714(d)(1)(v) specifically prohibits forwarding tickets for fund-raising activities or other solicitations for political contributions to a potential contributor.

14. Are contributions to the Woman's Caucus, Black Caucus, and similar organizations covered by this legislation?

Answer: No, unless these organizations take on the function of political committees carrying out the activities that are controlled by the Law. These contributions may, however, be considered to be a lobbying expense to be reported on the General Lobbying Activity Report.

15. Can a lobbyist ask State officials and candidates covered by the Law about the dates of their fundraisers in order to make personal contributions and attend the fundraiser?

Answer: The Law does not prohibit this inquiry or otherwise prohibit personal contributions by lobbyists. (See also Question 13.)

16. Can a lobbyist let clients know that a lobbyist may advise them on campaign finance at their specific request subject to the limitations of the Law?

Answer: The mere advising clients of permissible activities under the Law is not prohibited, Lobbyist should be careful, however, that the content, circumstances, and frequency of this advice does not take on the characteristics of solicitation. Also, the lobbyist has to make sure this does not become part of organizing or establishing a political committee which is prohibited

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by §15-713.

17. Do the limitations of the Law apply to contributions to State officials covered by the Law running for other offices?

Answer: Yes. The language, purpose, and history of the Law indicates that it applies to covered officials regardless of office sought.

18. If a lobbyist is sent fundraising tickets, are there any circumstances where these can be sent to the client?

Answer: No, the revisions of the Law in 2001 were intended to prohibit lobbyists from forwarding solicitations for officials or candidates to others. The Report of the Study Commission on Lobbyist Ethics specifically states that while it may be acceptable for an individual regulated lobbyist to respond to inquiries regarding the appropriate contact person within a specific entity that employs a lobbyist, it is inappropriate for the lobbyist to be forwarding solicitations. The report notes the purpose is intended to explicitly prohibit the forwarding practices.

19. Can the in-house staff of a trade association that is under the management and control of a board be involved in campaign finance activities if the Director of the association is a lobbyist?

Answer: The Law impacts lobbyists and those acting on behalf of lobbyists. The best way to be sure of compliance is by having people who normally would not be under the lobbyist's supervision handle campaign finance activities relating to State officials and candidates covered by the Law. If this is not done, any activity by association staff must clearly not be on behalf of the lobbyist. In order to help assure this separation, the following three general guidelines should be followed:

1. The lobbyist's Director should not be involved in solicitation, transmittal and other practices prohibited by the Law.
2. The lobbyist should not direct the staff in these campaign finance activities. This should be done by a board member or other appropriate person. A written policy and procedure should be established to document this process and give guidance to staff, board members, and trade association members who need to know how these matters should be handled.
3. The lobbyist's name should not appear on contribution solicitation letters or related contribution transmittal documents.
4. The lobbyist cannot be involved in organizing or establishing the political committee at all.

(See Questions 1 and 3 for more explanation and issues that may arise with this context.)

20. Can a lobbyist solicit friends or relatives to make political contributions to officials and candidates covered by the Law?

Answer: No. The Law prohibits any contribution solicitation or transmittal activity as to covered officials and candidates and this includes friends and relatives.

21. Can a lobbyist serving as an elected voting member on an association board vote on decisions to request a closely related Political Action Committee to make political contributions to State officials and candidates covered by the Law?

Answer: Based on the specific facts presented, voting to make a contribution request to the Political Action Committee would be prohibited by the solicitation provisions of the Law.

22. Are lobbyists allowed to serve on a county political party central committee?

Answer: Lobbyists may serve on county political party central committees but under §15-713 cannot participate as an officer of the central committee and cannot participate in fundraising activity on behalf of the political committee. Additionally, the lobbyist cannot participate in actions relating to filling a vacancy in a public office.

23. Does §15-714 restrict the fundraising activities of the State official or candidate covered by the Law?

Answer: Section 15-714 contains no express limitations on these activities. However, the State Lobbying Law is both a civil and criminal statute. This means that knowing and willful

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violation of the Law is a crime subject to the jurisdiction of the State Prosecutor. Therefore, if a State official or candidate covered by the Law were to knowingly and willfully attempt to have someone violate the Law (for example, a lobbyist making a prohibited solicitation) then there may be some liability under criminal law. The State Ethics Commission does not administer the criminal enforcement of the Lobbying Law. If a State official or candidate covered by the Law wants advice on the possible application of the criminal law, the Office of the State Prosecutor should be contacted.

24. **Can a lobbyist be involved in fundraising and related activity on behalf of candidates who are not State officials or candidates covered by the Law?**

Answer: Generally, the Law does not impact on fundraising activities on behalf of a candidate not for a listed State office or the General Assembly. This is true even if the candidate for his own reasons may later transfer some of his total funds to a State official or candidate covered by the Law. However, this assumes that the lobbyist has not entered into an express understanding or agreement that funds are to be transferred to covered races. For example, a lobbyist could not condition his fundraising on a promise to make such transfers. It also assumes that the campaign does not have in reality its major focus the transferring of campaign funds to covered races. Although involvement in non-covered office of fundraising would generally be allowed, a lobbyist would not generally be permitted to serve on a committee or be treasurer of a candidate committee making transfers to covered races due to various restrictions including those relating to transmittal of contributions to State officials or candidates for those offices.

Lobbyists, of course, cannot solicit contributions to covered candidates. This also means, for example, a lobbyist may not develop an understanding that a person will make a contribution to a State official if the lobbyist or some other person makes a contribution to a non-State official race in or outside of Maryland. However, it should be noted where a lobbyist is serving on a State or local central committee for a political party, the lobbyist cannot participate in any fundraising activity on behalf of the political party.

25. **Can a lobbyist covered by the Law run for a State office covered by the Law?**

Answer: The Law does not prevent a lobbyist running for a State office covered by the Law and raising campaign funds. However the Law continues to limit the lobbyist's activity as to others. Therefore activities involving slates, transfers of funds, and other similar activities would be impacted by the restrictions of the Law.

26. **If a lobbyist is covered by the campaign finance restrictions, for what period of time do restrictions apply?**

Answer: The Law applies while the person is a lobbyist. Additionally, if the lobbyist terminates lobbying the restrictions in §15-714 continue to apply for the remainder of that calendar year.

27. **What should a lobbyist do to avoid violating the bar in §15-714 against organizing or establishing a political committee for the purpose of soliciting or transmitting contributions from any person?**

Answer: This provision mandates a lobbyist not to be involved in any way in activities assisting an employer or others in organizing or establishing such committees. (See also Questions 1, 3 and 16.)

28. **Are there other similar restrictions in State Law regarding lobbyist and campaign finance activity?**

Answer: There are also State Law campaign finance restrictions relating to local campaign impacting on persons registered to lobby in Montgomery and Prince George's County. These are detailed in Sections 15-844 and 15-845 of the Ethics Law.

29. **What lobbyist campaign contributions are reportable under §15-707?**

Answer: The Law requires a report at the same time of the lobbying activity report covering contributions for the six-month reporting period for the benefit of the Governor, Lt. Governor, Attorney General, Comptroller, or member of the General Assembly or a candidate for election to any of these offices. The Law explicitly covers direct or indirect contributions by the individual regulated lobbyist. This means for example, reported contributions would include those to a political committee for an applicable candidate and also a slate where a candidate is a member. Other examples cited in the Study Commission on Lobbyist Ethics Report include a contribution to a PAC created to support a specific candidate or group of candidates or a PAC contribution where a contribution is designated for transfer to a particular candidate or candidates. Also included is where a lobbyist directs or arranges for another person to make a contribution and the funds used could be considered to be the lobbyist's control. This may include under some circumstances a contribution by a family member or a

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political action committee. Of course, the lobbyist also may not solicit these contributions.

30. How is a lobbyist employer's campaign contribution disclosure in §15-715 to be administered?

Answer: This program covers the employers paying compensation to lobbyists. The disclosure is filed with the State Board of Election Law which will develop the forms for this activity. Criminal violations are under the Ethics Law but civil violations can be the subject of State Ethics Commission action.

(Revised 2/25/98 memo)
